

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Revision of the Commission's Rules to Ensure) CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
To: The Wireless Telecommunications Bureau

REQUEST FOR LIMITED WAIVER

Conestoga Wireless Company, Inc. ("Conestoga"),¹ by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,² hereby requests a limited waiver of the June 30, 2002, deadline by which digital wireless systems must be capable of transmitting 911 calls from Text Telephone Devices ("TTY"). This requirement was imposed by the *Fourth Report and Order* in the above-captioned docket and Section 20.18 (c) of the Commission's Rules.³ In particular, vendor delays have made Conestoga's timely compliance with Section 20.18 (c) impossible. Conestoga therefore requests that it be allowed until October 31, 2002, to test and deploy TTY capability throughout its GSM network.

I. BACKGROUND

Conestoga is a small broadband PCS carrier that provides service using C- and D-Block channels in the Pennsylvania Basic Trading Areas ("BTAs") of Pottsville (Market B360),

¹ Conestoga is a wholly-owned subsidiary of Conestoga Enterprises, Inc. ("CEI"). CEI was recently acquired by D&E Communications, Inc. ("D&E"), a provider of integrated communications services to residential and business customers in markets throughout central and eastern Pennsylvania. The transfer of control of Conestoga was approved by the FCC on March 18, 2002 (*see* FCC File No. 0000709872) and was completed with the closing of the CEI transaction on May 24, 2002.

² 47 C.F.R. §§ 1.3, 1.925.

³ *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 FCC Rcd 25216 (2000); Section 20.18(c) of the Rules provides that "Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices (TTY). 47 C.F.R. § 20.18 (c).

Reading (Market B370), State College (Market B429), Sunbury-Shamokin (Market B437) and Williamsport. (Market B475). Conestoga's digital wireless network uses GSM infrastructure equipment from Nortel Networks ("Nortel"). As a result, Conestoga is dependent on Nortel for the development and testing of an acceptable digital TTY solution.

Nortel's TTY solution for GSM networks consists of software for the Base Station System (BSS) and the Mobile Switching Center (MSC). According to Nortel, lab testing and debugging of its TTY solution were underway this past January, but the software was still producing unacceptably high character error rates.⁴ These poor test results were of great concern since Conestoga could not place an order for the upgrade prior to the general availability date, and any delay in making this upgrade available would have a direct effect on Conestoga's ability to meet the FCC's prescribed deadline.

In its Quarterly TTY Report for April 2002, Conestoga notified the Commission that it was in the process of ordering the necessary TTY software upgrades from Nortel, and that the Company would make every effort to implement TTY capability in its markets prior to the June 30, 2002 deadline.⁵ However, Nortel's TTY solution for GSM networks (which is being provided with the GSM 13 software load) did not become commercially available until May of this year.⁶ Conestoga has since completed the first stage of the upgrade process by successfully transitioning its network from GSM 10 to GSM 12 base load software. The Company's network engineering staff is now troubleshooting and testing GSM 12 (a process that generally takes three

⁴ See Nortel Networks Customer Response Template TTY/911 for GSM Systems, TTY Forum's Aggregate Report of Carriers for 4th Quarter 2001, CC Docket No. 94-102, filed January 14, 2001 ("*January 2001 TTY Forum Report*") at pps. 83-4.

⁵ See Conestoga Wireless Company E911 TTY Device Capability Report for April 2002, CC Docket 94-102, filed April 15, 2002.

⁶ See Nortel Networks Customer Response Template TTY/911 for GSM Systems – April 10, 2002, TTY Forum's Aggregate Report of Carriers for 1st Quarter 2002, CC Docket No. 94-102, filed April 12, 2001 ("*April 2002 TTY Forum Report*") at page 87 ("The TTY software for the BSS is currently being validated at a customer site and should be commercially available by the beginning of May 2002.").

weeks to a month) and making preparations for the installation of GSM 13 software. This final upgrade, which will provide full TTY capability, is expected to begin in early September and all testing and optimization of its network will be completed no later than October 31, 2002.

II. GOOD CAUSE EXISTS FOR WAIVER OF THE JUNE 30, 2002 DEADLINE

Good cause exists for the FCC to grant Conestoga's request for a limited waiver of the June 20, 2002 TTY compliance deadline.⁷ Good cause is shown and waiver of a rule is appropriate if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."⁸ Similarly, under the Commission's rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁹

In Conestoga's case, special circumstances exist because the necessary software for providing digital TTY capability on Conestoga's GSM network was not made generally available by Nortel until shortly before the compliance deadline, and too late to allow proper implementation and testing of the technology upgrades. Moreover, Conestoga has been diligent in completing the initial phase the upgrade process earlier this month, and is making preparations to install the final software upgrade as soon as possible, in accordance with the expedited implementation schedule described above. Therefore, the Commission is not being presented with an open-ended extension request, but instead can be assured of prompt compliance within a reasonable period after the original deadline. Strict enforcement of the TTY compliance deadline in this instance would be inequitable and especially burdensome on a small carrier such

⁷ The Commission may grant an extension or waiver of a compliance deadline for good cause shown. *See* 47 C.F.R. § 1.3.

⁸ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

as Conestoga because it lacks the resources and market power that larger carriers can use to influence vendor delivery schedules and to participate in technology development and beta testing programs.

Finally, the underlying purpose of Section 20.18(c) – “requiring carriers to achieve TTY/digital compatibility at the earliest possible date”¹⁰ – would be frustrated by strict enforcement of the rule’s June 30, 2002 deadline in Conestoga’s case. The FCC has suspended and waived the compliance deadline as to digital wireless carriers for more than three years “because the technology did not exist to enable TTY signals to be transmitted over digital wireless systems at the time the rule was originally implemented.”¹¹ When it became apparent that the wireless industry and representatives of the disability community had developed solutions for nearly all air interfaces, the FCC adopted a two-stage deadline where carriers were to have obtained all software upgrades and equipment necessary for their systems to be capable of transmitting 911 calls from TTY devices by December 31, 2001, and “an additional six-month period (until June 30, 2002) to integrate, test, and deploy the technology in their systems in conjunction with the public safety community.”¹² Enforcing a strict deadline against Conestoga when the necessary software upgrades for TTY capability on its GSM network were not available until May of 2002 would defeat the whole purpose of the rule, because it would deprive Conestoga of any meaningful opportunity to integrate, test and deploy the new technology in conjunction with PSAPs in its operating territory. In contrast, granting Conestoga a four-month extension (*i.e.*, shorter than the six-month testing period that the Commission found to be reasonable in the *Fourth Report and Order*) would promote these interests without significantly

⁹ See 47 C.F.R. § 1.925(b)(3).

¹⁰ *Fourth Report and Order* at ¶ 29.

¹¹ *Id.* at ¶ 7.

¹² *Id.* at ¶ 8.

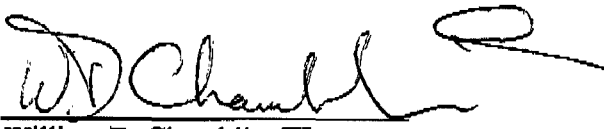
delaying the availability of digital TTY access to the hearing impaired in Conestoga's operating territory.

III. CONCLUSION

Based on the foregoing, Conestoga respectfully requests that the Commission grant it a temporary waiver of Rule Section 20.18 (c) regarding the June 30, 2002 deadline and extend the deadline to permit Conestoga to implement its TTY solution by October 31, 2002.

Respectfully submitted,

Conestoga Wireless Company, Inc.

By 
William D. Chamblin, III
President

Conestoga Wireless Company, Inc.
215 W. Philadelphia Ave.
Boyertown, PA 19512
(610) 367-1200
(610) 367-1207 (fax)

John A. Prendergast
D. Cary Mitchell
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW Suite 300
Washington, DC 20037

(202) 659-0830
(202) 828-5568 (fax)

Filed: June 24, 2002